

Agenda Item Form

Agenda Date: June 2, 2004

Districts Affected: # 7

Dept. Head/Contact Information: Irene Ramirez, P.E., Interm City Engineer Ext. 4422/Bashar Abugalyon, P.E.,
Interim Assistant City Engineer Bashar Abugalyon, P.E. Ext. 4157

Type of Agenda Item:

- | | | |
|---|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input checked="" type="checkbox"/> Other <u>Conditional 'B' Building Permits</u> | | |

Funding Source:

- ☐ General Fund
☐ Grant (duration of funds: _____ Months)
☐ Other Source: _____

Legal:

- ☐ Legal Review Required Attorney Assigned (please scroll down): None ☐ Approved ☐ Denied

Timeline Priority: ☐ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

Requested by: Tropicana Development Inc.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

No costs

Statutory or Citizen Concerns:

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits
Capistrano Park Subdivision Unit 5

Departmental Concerns:

Department recommends approval

CITY CLERK DEPARTMENT
2004 MAY 27 PM 1 54

Date: May 27, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:
June 2, 2004.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

Capistrano Park Subdivision Unit 5 (District 7)

Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION
CONTACT INTERIM ASSISTANT CITY ENGINEER BASHAR ABUGALYON, P.E.
AT 541-4157.

City Clerk's Use

Action Taken: _____ Item No. _____

TROPICANA DEVELOPMENT

4655 Cohen Ave.
El Paso, TX 79924

Mr. Bashar Abugalyon, P.E.
Interim Assistant City Engineer
Engineering Department, 4th Floor
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

RE: Capistrano Park Subdivision Unit 5

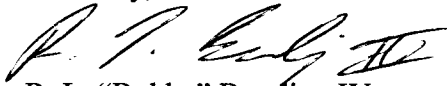
Dear Mr. Abugalyon,

Tropicana Development, the developer and general partner of Capistrano Park Subdivision Unit 5, respectfully requests that you grant us "Conditional B" acceptance. The "Conditional B" acceptance request is necessary for the contractor to obtain permits to provide construction work and housing for the general public. As you may know, this is a state of Texas low-income housing tax credit project with strict deadlines. Some of these deadlines were shortened due to litigation that dragged on for several months at the end of 2003.

If these state deadlines are not complied with, the project is at risk of losing its tax credits and the project being terminated as a result. El Paso and Tropicana would lose millions in tax credit dollars already awarded by the state of Texas if this project is terminated, therefore, we believe this situation qualifies as a "hardship" under city code.

We greatly appreciate your assistance in this endeavor. Please call if you need any additional assistance or have any questions.

Sincerely,




R. L. "Bobby" Bowling IV
Vice President

ENGINEERING DEPARTMENT

Development Division

DATE: May 27, 2004

TO: Mayor & City Council

FROM: Bashar Abugalyon, P.E., Interim Assistant City Engineer 

SUBJECT: Conditional "B" Building Permits
Capistrano Park Subdivision Unit 5 (District 7)

The above referenced request is scheduled for City Council Regular Agenda on June 2, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be issued until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 26 day of MAY, 2004, by and between TROPICANA DEVELOPMENT INC. (hereinafter referred to as "Developer"), a Texas corporation, and TROPICANA BUILDING CORP. (hereinafter referred to as "Applicant"), a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of CAPISTRANO PARK UNIT FIVE SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal Code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and Applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
 - A. **an Unconditional Building Permit** may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
 - B. **a Conditional "A" Building Permit** may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
 - C. **a Conditional "B" Building Permit** may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.
4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the data and year first set forth above.

DEVELOPER

By: RC Bowling III

STATE OF TEXAS)
)
COUNTY OF EL PASO)

APPLICANT:

By: RC Bowling III

This instrument was acknowledged before me on this 26th day of May, 2004, by RC Bowling III of TROPICANA Dev. a State of Texas Company, on behalf of said Company.

Martha L Aranda
NOTARY PUBLIC FOR THE STATE OF TEXAS
Printed Name: Martha L. Aranda
My Commission Expires: _____

